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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**EDWIN GAIL DONAHUE, JR.,**

**Defendant and Appellant.**

**A125225**

**(Humboldt County  
Super. Ct. No. CR065843)**

Edwin Gail Donahue, Jr. (appellant), appeals from the judgment entered following the trial court's order revoking his probation and ordering execution of a four-year prison term. Appellant contends the abstract of judgment must be corrected to reflect that he pled guilty to assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) (hereafter section 245(a)(1)), rather than assault with a deadly weapon (§ 245(a)(1)). Respondent agrees. We affirm with directions to the trial court to correct the abstract of judgment.

### BACKGROUND

On October 31, 2006, appellant was charged by complaint with assault with a deadly weapon and by means of force likely to produce great bodily injury (§ 245(a)(1)) (count one) and drawing or exhibiting a deadly weapon (Pen. Code, § 417, subd. (a)(1)) (count two). Appellant pled not guilty to both counts.

Pursuant to a negotiated disposition, on December 12, 2006, appellant pled guilty on count one to assault by means of force likely to produce great bodily injury (§ 245(a)(1)). As a factual basis for the plea, appellant and his counsel admitted appellant swung at the victim with a knife, injuring the victim's finger. The trial court struck the assault with a deadly weapon allegation in count one and dismissed count two. The court subsequently sentenced appellant to a four-year prison term, suspended execution of the sentence, and placed appellant on probation for four years.

On June 8, 2009, after a series of probation revocations, reinstatements, and modifications, the trial court revoked probation and ordered execution of the four-year prison term.

### DISCUSSION

During the December 2006 plea proceedings, defense counsel explained the plea bargain as follows: “The offer is, if [appellant] pleads to a . . . section 245, the People will strike the knife allegation and there will be a stipulation that it is not a strike.” Appellant pled guilty to “willfully, unlawfully and feloniously commit[ting] an assault upon [the victim] by means of force likely to produce great bodily injury in violation of . . . section 245(a)(1).” Appellant did not plead guilty to assault with a deadly weapon; the trial court struck that allegation. Nevertheless, the abstract of judgment prepared following the sentencing states that appellant pled guilty to violation of section 245, subdivision (a)(1) “ADW or GBI force/not firearm.” As appellant contends and respondent concedes, the reference to “ADW”—assault with a deadly weapon—is in error.

This court has authority to direct the trial court to correct the error in the abstract of judgment. (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1184.) It is important that we do so. As the California Supreme Court explained in *People v. Delgado* (2008) 43 Cal.4th 1059, 1072, “confusion . . . can be avoided if judgment records are prepared with utmost care and sensitivity to their possible relevance in later criminal proceedings. When a defendant is convicted under a statute, such as section 245(a)(1), that covers in the alternative two slightly different offenses, only one of which is defined as a serious

felony, and the issue whether the conviction was for the serious or the nonserious form may thus have substantial penal consequences if the defendant suffers a subsequent felony conviction, it is necessary that the abstract of judgment specify, with scrupulous accuracy, the crime of which the defendant was actually charged and convicted.”

#### DISPOSITION

The matter is remanded to the trial court with directions to correct the abstract of judgment to reflect that appellant was convicted of assault by means of force likely to produce great bodily injury (§ 245(a)(1)), rather than assault with a deadly weapon (§ 245(a)(1)). The trial court shall send a copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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SIMONS, J.

We concur.

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JONES, P.J.

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BRUINIERS, J.